

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**MISSOURI PRIMATE FOUNDATION,
et al.,**

**Plaintiffs and
Counterclaim Defendants,**

v.

**PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC., et al.,**

**Defendants and
Counterclaim Plaintiffs.**

Case No. 4:16-cv-02163

**COUNTERCLAIM PLAINTIFFS' MOTION FOR LEAVE
FOR AN EXPERT WITNESS TO TESTIFY REMOTELY**

Pursuant to Rule 43(a) of the Federal Rules of Civil Procedure, Counterclaim Plaintiffs, People for the Ethical Treatment of Animals, Inc. and Angela Scott (together, "Plaintiffs"), move for an order allowing expert witness Dr. Frederick Snow to testify at the upcoming January 5, 2022, evidentiary hearing by videoconference.

In support of this motion, Plaintiffs state as follows:

1. On October 29, 2021, the Court scheduled the hearing at issue for December 1, 2021. [ECF No. 342.]
2. On November 29, 2021, Counterclaim Defendant Tonia Haddix filed a motion to continue the hearing. [ECF No. 345.] The Court granted Ms. Haddix's motion and reset the hearing for December 20, 2021. [ECF No. 347.]
3. As one of Plaintiffs' witnesses had a prior and inflexible professional engagement on December 20, Plaintiffs filed a motion to continue the hearing. [ECF No. 350.] The Court granted Plaintiffs' motion and reset the hearing for January 5, 2022. [ECF No. 352.]

4. The Federal Rules of Civil Procedure provide that “[f]or good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.” Fed. R. Civ. P. 43(a).

5. Courts interpret “compelling circumstances” justifying remote testimony “to include ‘illness, disability, legal impediment, or actual conflict.’” *Sprint Nextel Corp. v. Yoak*, No. 4:13CV01292 AGF, 2014 WL 6796074, at *1 (E.D. Mo. Dec. 2, 2014), *vacated on other grounds*, No. 4:13CV01292 AGF, 2014 WL 12727212 (E.D. Mo. Dec. 9, 2014) (quoting *Christians of Cal., Inc. v. Clive Christian NY, LLP*, No. 13–cv–275 (KBF), 2014 WL 6467254, at *4 (S.D.N.Y. Nov. 10, 2014)). In fact, “[t]he most persuasive showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but remains able to testify from a different place.” Fed. R. Civ. P. 43(a) advisory committee’s note to 1996 amendment.

6. The week of December 27, 2021, Plaintiffs’ counsel became aware that Dr. Snow, who resides in Tennessee, had fallen ill. At that time, he anticipated being fully able to travel from Tennessee to St. Louis participate in person at the January 5 hearing. Unfortunately, Dr. Snow’s illness worsened, and he can no longer travel for the hearing. At present, he anticipates being able to offer his testimony by videoconference.

7. Plaintiffs wish to avoid further delay of the hearing by way of a third continuance, and therefore request the Court enter an Order granting Plaintiffs leave, pursuant to Rule 43(a), for Dr. Snow to testify remotely via videoconference. Plaintiffs’ counsel and any other witnesses will be present in court.

Dated: January 3, 2022

Respectfully submitted,

/s/ Jared Goodman

JARED GOODMAN (#1011876DC)

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CERTIFICATE OF SERVICE

I certify that on January 3, 2022, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, and was served by email and was placed in the U.S. Mail to:

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Appearing Pro Se

/s/ Jared Goodman